IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.248 OF 2006
IN
SUIT NO. 1320 OF 2004

SANTOSH G. RANE ... PLAITIFF.
VS.
MAHARASHTRA HOUSING & AREA
DEVELOPMENT AUTHORITY & ORS. ... DEFENDATS.

MR M.P.S.RAO WITH MR. RELE I/B. LEGAL VISIO FOR THE PLAINTIFF.
MS. USHA PUROHIT FORDEFENDANT NO.4.
MR. G.W.MATTOS AGP FOR THE DEFENDANT NO. 1 TO 3.

Coram : S.K.Shah, J.
Date : March 6, 2007.

P.C.:-

1. Heard the Counsel on both sides.

2. By this motion, the Plaintiff is seeking interim relief restraining the defendat No. 1 to 3 and the Authorities of MHADA from implementing and taking any action pursuant to a letter dated 3.12.2004, issued to the Plaintiff, as also restraining them from allotting 1/2 of the bid to the defendant No. 4 and further restraining the defendant NO.1 to 3 from disturbing and disconnecting the cable lines laid by the Plaintiff on the site known as Ganesh Nagar, Charkop, Kandivali (W), and directing the defendant NO.1 to 3 to allot the whole work of providing cable services in the Colony of M.H. & A. D. Board, Ganesh Nagar Charkop, Kandivali (W) to Plaintiff.

3. By tender notice dated 24.6.2004, the Defendant Board invited tenders for the operation of cable in the locality known as Ganesh Nagar, Charkop, Kandivali (W). It is the case of the Plaintiff that the bid given by the Plaintiff was the highest than the defendant No.4 and the bid of the defendant No. 4 was lower than the Plaintiffs' bid. MHADA conceded the defendant No.4 as existing operator and the defendant No.4 was therefore allowed to match the highest bid given by the Plaintiff and having done so, divided the tender bid equally between the Plaintiff and defendant No.4 and granted work order in favour of both the Plaintiff and defendant No.4.

4. The contention of the Plaintiff is that the defendant No.4 was not at all existing cable operator and therefore, the defendant No. 4 could not have been allowed to match the bid given by the Plaintiff and consequently, the defendant No. 1 to 3 could not have divided the bid between them and granted 1/2 of the same to defendant No.4.

5. In the earlier proceeding the Honourable Supreme Court had given the following direction in SLP No. 5076 to 5078 of 2002. The direction was as under :

"In case the existing cable operator who is

operating is ready to match highest bid, then he would be given preference above the highest bidder"

6. It is the contention raised on behalf of the Plaintiff that since the defendant No.4 was not the existing cable operator and even otherwise the bid of the defendant No.4 was not higher than the bid given by the Plaintiff, defendant No. 1 to 3 could not have divided bid and given half of the said work to the defendant No.4.

7. As against this it is submitted on behalf of the defendant No. 1 to 3 that under Order 7 Rule 11 D the Suit is barred for want of statutory notice under Section 173 of the CPC. It is also the contention of the defendant Board that in fact the defendant No.4 was the existing cable operator. Similar is the contention raised on behalf of the defendant NO. 4.

8. What is pointed out is that the defendant No. 4 was earlier required to make a deposit of Rs. 50,000/- and that was made by the defendant No. 4. This prima facie indicates that the defendant No. 4 was also the existing cable operator. In view of the facts indicated above and a specific resolution having been pointed out by the defendants, that there will be no bar to the defendant Nos. 1 to 3 to award the tender by equally dividing the same among two bidders. The relief which the Plaintiff is seeking is not tenable. Since the defendant No. 4 was also one of the cable operators as observed above, prima facie it was proper on the part of the defendant Nos. 1 to 3 to give a chance to defendant No.4 the then existing cable operator to match the bid given by the Plaintiff, the highest bidder. This being so and it being within the powers of defendant No.1 to 3 to equally divide the tender work between the two, prima facie I do not find that it is a fit case to grant relief in favour of the Plaintiff.

9. Consequently, the notice of motion stands dismissed. No Order as to costs.

10. The learned Counsel for the Plaintiff requests for staying the operation of this Order for a period of three weeks. The Counsel for defendant Nos. 1 to 3 objects for the same. However, since an ad interim relief was granted in favour of the Plaintiff, in terms of prayer clause (b), I am inclined to stay the operation of this Order for a period of three weeks. The Operation of the Order is stayed for three weeks from today.

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[S.K.Shah, J.]